Calendar No. 494

98TH CONGRESS, 1st Session } SENATE { REPORT No. 98–282

NONPOINT SOURCE POLLUTION MANAGEMENT ACT OF 1983

OCTOBER 26 (legislative day, OCTOBER 24,) 1983.—Ordered to be printed

Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2006]

The Committee on Environment and Public Works, reports an original bill (S. 2006), to amend the Clean Water Act to provide for a program for reduction of nonpoint sources of pollution and recommends that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of the legislation is to assure that the States develop effective management programs to reduce nonpoint sources of pollution and provide Federal financial and technical assistance for the implementation of those management programs.

RELATED LEGISLATIVE HISTORY

It is the intention of the Committee to join the texts of this bill and S. 431 into a single, committee-sponsored amendment to S. 1288. That bill, containing a one-year authorization for the Clean Water Act, was reported May 16, 1983, in order to comply with requirements of the Congressional Budget Act. When the Senate adopts the committee-sponsored amendment to S. 1288, the legislative history of S. 1288 shall then include the report on S. 431 (S. Rept. 98–233) and this report. S. 1288, as amended, will be known as the "Clean Water Act Amendments of 1983".

GENERAL STATEMENT

Nonpoint source pollution is runoff pollution. Its sources are diverse: urban runoff from roofs and paved areas, return flows from irrigated agricultural lands, runoff from lands disturbed by construction, for-

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estry operations and agricultural practices, and uncollected runoff and seepage from mining areas. As the Clean Water Act's requirements exert greater control over point sources of pollution, nonpoint sources emerge as the major impediment to attaining and maintaining water quality standards and achieving the goals and objectives of the Act in many water bodies. In reports to the Environmental Protection Agency, States have identified nonpoint sources as a major problem preventing attainment of the goals of the Clean Water Act.

Although the nature of nonpoint source pollution problems varies from place to place, these sources have been found to be a significant cause of many water quality problems across the United States. According to various estimates, they are responsible for 49 to 76 percent of oxygen-demanding organic materials, 66 to 99 percent of suspended solids, 83 to 85 percent of dissolved solids, 80 to 92 percent of nitrogen, 42 to 94 percent of phosphorous, up to 98 percent of the bacteria, and are also a major source of pesticides, lead, zinc, cadmium, and copper entering the Nation's waters. In reports submitted to the Environmental Protection Agency pursuant to section 305(b) of the Clean Water Act, State officials have identified nonpoint sources as a significant contributing factor in a large majority of the stream segments which have not attained water quality standards. Recent intensive analyses of pollution problems in the Great Lakes and the Chesapeake Bay have identified such sources as being an important cause of the water quality problems these water bodies are experiencing. While the nature and amount of nonpoint source pollution varies from place to place, the results are all too familiar—siltation that smothers fish and aquatic life, nutrient enrichment that accelerates eutrophic conditions and strips oxygen from the water, and accumulation of pesticides and other toxic substances that can contaminate fish and shellfish and enter the human food chain.

In addition to nonpoint sources preventing the attainment of the goals of the Clean Water Act in many stream segments and lakes, these sources exact an unknown but undoubtedly high cost from the Nation in loss of reservoir capacity, increased water treatment costs, depressed fisheries, decreased land productivity and other such effects as a result of the high loads of sediment and other pollutants entering the Nation's waterways from uncontrolled runoff. One witness before the Committee estimated this cost to be about $2.5 to $3.0 billion per year.

Although the Clean Water Act has proven effective in reducing pollution from point sources such as factories and municipal sewage treatment plants, it has not dealt adequately with the types of nonpoint source pollution described above. Nonetheless, several Clean Water Act programs have helped lay a foundation of knowledge and experience for the programs required by this bill.

For example, section 208 of the Clean Water Act established a planning process that has been instrumental in identifying the sources of nonpoint pollutants and the environmental damage caused by such pollutants to the Nation's estuaries, lakes, and rivers. This planning process has also fostered the development in some States of programs to address the problems posed by nonpoint sources of pollution. Also, grants under the Clean Lakes Program (section 314) and the Great

Lakes Program (section 108(a)) have been used to demonstrate the feasibility and effectiveness of various nonpoint source control practices.

The Department of Agriculture's Experimental Rural Clean Water Program, which is modeled closely on a similar program authorized by section 208(j) of the Clean Water Act, has demonstrated the effectiveness of cooperative efforts at the local level in achieving implementation of agricultural practices to reduce nonpoint source pollution. Other Department of Agriculture programs, especially those administered by the Soil Conservation Service and the Agricultural Stabilization and Conservation Service, have spent decades developing land conservation techniques which, in many cases, can be useful in a water quality protection program.

Nonpoint source pollution is a nationwide problem. It is important in all States, and nearly a fifth of the States report that nonpoint source pollution is the most important cause of water quality degradation. This bill requires States to design and implement a program to control nonpoint sources of pollution in the Nation's estuaries, rivers, and lakes. It calls for a targeted attack on the problem. Programs are required only in watersheds where the waters are not expected to attain or maintain the water quality standards or goals of the Clean Water Act because of nonpoint source pollution. The bill requires the States to address those types of nonpoint sources that are interfering with the achievement of these standards or goals. It places the major responsibility for designing and implementing the program at the State level and provides the States with substantial flexibility in defining best management practices to reduce runoff and in designing and implementing a suitable program to achieve implementation of the practices by identified sources.

This bill requires implementation, not more planning. Numerous witnesses testified before the Committee that States and local and regional organizations have sufficient experience and knowledge based upon earlier planning efforts to move quickly into the implementation phase. Agriculture and forestry interests also testified that they understand the importance of the nonpoint source problem, that they know how to reduce nonpoint source loadings, and that they are committed to doing so.

Due, in part, to previous Clean Water Act planning and research programs, there exists a broad array of effective best management practices available to control nonpoint sources of pollution. For controlling agricultural runoff, these practices include improved methods of tillage and crop rotation, the use of grassed waterways and buffer strips, proper application of fertilizers and pesticides, and improved management of animal wastes and feedlots. The most appropriate set of practices depends on a variety of site-specific factors such as crops, soil type, and slope of the land. This legislation allows the State to use its discretion in deciding what practices are most appropriate for a particular source or category of source.

In many cases, implementation of best management practices will benefit not only the quality of the receiving waters but the farmer as well. Reducing topsoil loss to an acceptable level and keeping fertilizers and pesticides on the farmland rather than in the water often

are in the best economic interest of the farmer. For example, the Department of Agriculture has estimated that over 15 percent of the fertilizer applied to cropland is washed into nearby waterways, thus wasting millions of dollars as well as polluting the water.

As with farming, best management practices related to grazing involve managing grazing lands to maintain and perpetuate the productive capability of the land. For example, overgrazing reduces vegetation, leaving the soil exposed and subject to erosion. Implementation of best management practices on grazing lands can increase both the quality and the quantity of water.

Additional rural sources of nonpoint pollution include such activities as timbering and surface mining. Timbering and mining activities can result in sediment runoff choking nearby streams. Mining operations can also result in serious nonpoint source pollution problems from acid mine drainage and leaching of toxic metals. Best management practices exist that currently are used at some sites to control sediment runoff and acid mine drainage. Use of these practices should be expanded to reduce nonpoint source pollutant loadings from these operations. For example, water pollution from forestry operations can be reduced greatly by proper placement and management of logging roads, culverting, and establish cover on exposed soil.

Urban runoff presents special concerns because of the presence of large quantities of toxic heavy metals and other toxic compounds, as well as bacteria, phosphorous, nitrogen, and organic materials that strip oxygen from the water. Large paved surfaces allow pollutants to accumulate during dry periods, allowing high concentrations of pollutants, including toxicants, to run off in large quantities after heavy rains. Additionally, earth moving activities related to residential and commercial construction represent an enormous potential for sediment runoff. The planning phase of residential and commercial development provides an excellent opportunity to incorporate runoff controls, thereby preventing problems rather than attempting to correct existing problems. Some States and local jurisdictions have implemented progressive requirements, such as straw bale barriers, to control storm water runoff related to construction activities. Best management practices for reducing urban runoff also may include infiltration devices, grassed waterways and storage basins. While retrofitting such controls in existing urban areas may be costly, such practices should be implemented, when appropriate, in new development activities.

The bill focuses on identifying water bodies in which water quality standards or the goals of the Act will not be attained or maintained. In addition, the States should consider the need to protect high quality waters from degradation resulting from change in land usage. Concern has been expressed regarding "sod busting" activities, where previously uncultivated lands are converted into agricultural croplands. These activities, if not carried out with a sensitivity to maintaining water quality, can result in severe environmental problems from high sediment runoff. As with commercial and residential development, States can prevent water quality problems from occurring through implementation of best management practices in development of new agricultural lands. The adage "an ounce of prevention is worth a pound of cure" is especially appropriate in addressing the widepread

problems of nonpoint source pollution from developing as well as existing sources.

It is critical that greater efforts be made to reduce nonpoint sources of pollution, and the Committee considered several different proposals for an amendment to achieve this result. Some of these proposals involved deadlines for implementation of needed management practices and a strong Federal role in oversight and implementation in the event of inadequate response by States or particular nonpoint sources. The Committee ultimately selected the approach adopted in this bill because it allows maximum opportunity to States to develop programs that they believe will be most effective in their particular circumstances. The objective of these programs must be implementation of best management practices by sources, and the success of the approach set forth in this bill will be judged by its effectiveness in meeting this objective.

Section-by-Section Analysis

SHORT TITLE

Section 1 of the bill, as reported, provides that this bill may be cited as the "Nonpoint Source Pollution Management Act of 1983."

NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

Section 2 of the bill adds a new section 319 to title III of the Clean Water Act. The new section 319 requires States to develop nonpoint source pollution management programs, specifies the elements of those programs, and provides for Federal approval and financial assistance in the implementation of approved State programs.

DEVELOPMENT OF STATE PROGRAMS

Section 319(a)(1) requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. Such a program must:

(A) identify waters which are not expected to attain applicable water quality standards or Clean Water Act goals without control of nonpoint sources;

(B) designate categories, subcategories, or particular nonpoint sources that contribute significant nonpoint pollution to those waters;

(C) identify best management practices (BMPs) which will be undertaken to reduce pollution in each category or subcategory;

(D) identify programs to be used to achieve implementation of identified BMPs, by the designated nonpoint sources, including nonregulatory or regulatory programs for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects;

(E) include a schedule containing annual milestones for utilization of the programs identified in (D) and implementation of the BMPs identified in (C) at the earliest practicable date;

(F) assure that existing State laws are adequate to carry out the proposed program, or contain a stated intent to seek additional needed authority together with a proposed schedule; and

(G) identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loadings in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the waterbody by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the downstream State may not be adequately addressed, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts in section 319(d)(2)(B). A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, e.g., an estuary lying in two or more States or a lake or river that forms the boundary between two States.

Subsection (a)(1)(A) requires each State to identify those particular waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such waters under subsection 319(a)(1)(A). In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the Act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading of water quality standards.

In section (a)(1)(B), the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified in subparagraph (A).

The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that make sense in terms of the types of nonpoint source pollution problems and the type program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

"Particular nonpoint sources" could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term "best management practices" in subsection (a)(1)(C) is left undefined in the bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices (BMP's) already are being implemented. The term encompasses a broad array of management practices that can be undertaken, alone or in combination, to reduce nonpoint sources of pollution. For example, in soil conservation programs over forty BMP's have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants, thereby resulting in cost savings to the farmer.

Best management practices have also been identified for reducing runoff from urban areas (e.g., storm water containment structures), construction areas (e.g., erosion barriers such as straw bales and dikes), silviculture areas (e.g., careful road placement, culverting, grassing of abandoned roads and skid trails), and grazing lands (e.g., herd and vegetation management).

Subsection (a)(1)(D) allows a State the flexibility to construct a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose: to achieve implementation of BMP's by the identified sources. The State is expected to show how its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the sources identified in subsection (a)(1)(B). Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by sources. This is a requirement that the State take responsibility for the effectiveness of its program in terms of getting BMP's implemented by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants pursuant to subsection (d), must consider

the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

Milestones for both program implementation and BMP implementation by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutants and differing degrees of difficulty in achieving pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State program.

In subsection (a)(1)(F), the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as quickly as they can.

The bill also vests authority with the States in subsection (a)(1)(G) to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effects on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

This subsection is based on the current provisions in Executive Order 12372. This Executive Order, issued by President Reagan, establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive Order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive Order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's review to include any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This subsection, in conjunction with subsection (f)(1), builds upon established procedures for State review of Federal activities. These subsections provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

Subsection (a)(2) gives the States authority to use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to

be consistent with the goals and objectives of this new section. Subsection (a)(3) gives the States authority to make use of local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) and soil conservation districts.

In many cases, information and institutional relationships developed under the section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States used the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. In such cases, the State is encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

FEDERAL REVIEW AND APPROVAL

Subsection (b) describes the responsibilities of the Administrator of the Environmental Protection Agency subsequent to the submission of a State's proposed management program. The Administrator is given a maximum of six months after receipt of a State program in which to determine its compliance with the requirement of subsection (a)(1). If he determines that it does not comply, he must notify the State of any modifications necessary to obtain approval. The State is then given three additional months to submit a revised program, to be approved or disapproved by the Administrator within three months of receipt.

If the Administrator determines that a State management program meets the requiremetnts in subsection (a)(1), he must approve the program. If he fails either to approve or request modification of a submitted State program within six months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within three months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of subsection (a)(1), the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The bill does not provide precise criteria for program aproval because it is expected that programs may vary from State to State. However, the Administrator's review should involve considerably more than a checklist of required program elements. The Administrator must review submitted programs in light of the objective of the bill, which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest

practicable date. Before approving the program and awarding Federal grants to support its implementation, he should be persuaded that the program is capable of meeting this objective.

FEDERAL IDENTIFICATION OF POLLUTION PROBLEMS AND SOURCES

Subsection (c) pertains to States which fail to submit a nonpoint source management program consistent with subsection 319(a)(1). After the Administrator notifies such State, he must carry out the requirements of section 319(a)(1)(A) and (B) on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

The purpose of this provision is to make Congress aware of the extent of nonpoint source pollution problems that are not being addressed because of failure to comply with the requirement of this section that States implement a nonpoint source pollution management program. Thus, there will be available to Congress, in a timely fashion, information on the causes and problems of nonpoint source pollution on a nationwide scale for noncomplying States, as well as complying States. Such information will be needed for future decisions on nonpoint source pollution control.

PROGRAM IMPLEMENTATION GRANTS

Subsection (d) authorizes Federal grants to States to assist them in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this new section. The Federal grants are not to exceed 75 per centum of the costs of implementing the State management program. Non-Federal funds must be equal to at least 25 per centum of the costs being paid for by the Federal grant. This requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

Two-thirds of the Federal funds for grants are to be allotted to the several States (as defined in the Clean Water Act) based on the table included in the bill. These funds can then be awarded to States with approved management programs to the extent they contribute the required 25 per centum matching funds. The table in subsection (d)(2)(A) presents a percentage allotment for the fifty States, the District of Columbia, and Puerto Rico, computed on factors of population and acreage in production. No State is allotted less than one-half of one per centum of the total two-thirds grant allotment.

The allotment table also provides that one-tenth of one per centum of the allotted funds shall be available for grants to each of the following: American Samoa, Guam, Northern Marianas, Pacific Trust Territories, and the Virgin Islands. The amount of one-tenth of one per centum was selected because of the small populations and acreages in production in each of these areas.

Subsection (d)(2)(B) authorizes the Administrator to award discretionary grants to States (as defined in the Clean Water Act) from

the one-third portion of the funds appropriated for grants that he holds in reserve. This provision is intended to give the Administrator authority to provide additional financial assistance in addition to that provided under the allocation formula to States that are seeking to control particularly difficult or serious nonpoint source pollution problems, to implement innovative control methods, or to control interstate nonpoint pollution problems. These grants are to be awarded at 75 per centum of the cost with non-Federal funds paying 25 per centum of the costs.

This provision is intended to provide an additional financial incentive to States to implement the three types of program initiatives described above. These discretionary funds may be used, for example, to address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to one problem. Also, it may be the case that the allotment formula imperfectly distributes Federal funds to the States with the most extensive problems. In such cases, the Administrator is expected to use the discretionary funds to achieve more effectively the objectives and requirements of this bill. Additional funding to States with particularly difficult problems will result in more expeditious implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

The Administrator also is expected to support States' efforts to develop innovative nonpoint source pollution control practices. Again, the States may perceive little incentive to devote program grant resources to innovation and may properly be reluctant to stake program schedules and commitments on the success of innovative practices. In such cases, the Administrator may support the State's innovative efforts from the discretionary funds.

As discussed above, interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to one State while the environmental benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

Though these funds are discretionary, the Administrator is expected to use all available funds to support the activities for which they are intended, as described above, in response to applications from the States that meet the requirements and objectives of this bill.

Subparagraph (d)(2)(B) also authorizes the Administrator to make funds available directly to Indian tribes to implement nonpoint source pollution management programs consistent with subsection (a)(1). Such grants will be for 75 per centum of the costs of implementation with the tribes providing 25 per centum of the costs.

Subsection (d)(3) provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted to the States according to the table in paragraph (d)(2)(A) in the following fiscal year. This applies to funds not obligated by the Administrator under both subparagraphs (A) and (B) of subsection (d)(2).

Subsection (d)(4) provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar

as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs meet the requirements of subsection (a)(1). Subsection (d)(5) requires the Administrator to determine, before awarding a subsequent grant to a State, that such State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. The determination under this subsection is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used effectively to achieve the objectives of this bill.

Subsection (d)(6) authorizes the Administrator to request such information, data, and reports as he may deem necessary to determine future eligibility for grants under this section. Under the authority of this subsection, the Administrator may request information about the management of Federal funds obligated to the States in order to assure that the funds are being used in a manner consistent with the requirements and objectives of this bill and with applicable regulations. If a State refuses to submit information, data, and reports requested by the Administrator, the Administrator should withhold a State grant authorized under this section.

Subsection (d)(7) authorizes $70 million for fiscal year 1985; $100 million for fiscal year 1986; and $130 million for fiscal year 1987. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this subsection and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer that Agency's obligations under this new section.

STATE REPORTS

Subsection (e) requires each State to submit an annual report to the Administrator on its progress in meeting the schedule submitted pursuant to subsection (a)(1)(e) of this section and, to the extent possible, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

REQUIREMENTS OF EPA AND OTHER FEDERAL AGENCIES

Subsection (f)(1) requires the Administrator to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of subsection (a)(1)(G) of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so

that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372 (as in effect on September 17, 1983), concerns the State may express about consistency of projects or activities with the State's nonpoint source pollution management program.

The intent of this provision was explained partially in the discussion of subsection (a)(1)(G) earlier in this report. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal activities with the State's nonpoint source management program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The Committee's intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference into the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

Subsection (f)(2) requires the Administrator to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote information sharing among the States and to provide the basis for technical assistance to State programs.

Subsection (f)(3) requires the Administrator, within three years of enactment, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experiences in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report as well as any reports made to Congress under subsection (c), is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

FEDERAL AGREEMENTS

Section 3 of the bill amends existing section 304(k)(1) of the Clean Water Act to incorporate a reference to this new section 319. Existing section 304(k)(1) requires the Administrator to enter into agreements

with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to this section.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., October 20, 1983.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Nonpoint Source Pollution Management Act of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

James Blum
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

October 20, 1983.

1. Bill number: Not yet assigned.
2. Bill title: The Nonpoint Source Pollution Management Act of 1983.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 21, 1983.
4. Bill purpose: The bill amends the Clean Water Act by adding a new section that creates a nonpoint source pollution management program to be administered by the Environmental Protection Agency (EPA), and authorizes appropriations for fiscal years 1985 through 1987.

Under the new program, each State is required to submit a proposed nonpoint source pollution management program to the EPA Administrator. The Administrator is authorized to award matching grants for implementing approved programs. From each year's appropriation, two-thirds is to be allocated by formula and the remaining one-third may be awarded at the Administrator's discretion for particularly serious or difficult problems, innovative procedures, interstate nonpoint source pollution problems, and financial aid to Indian tribes for implementing approved programs.

5. Estimated cost to the Federal Government:

	Millions
Authorization level:	
Fiscal year:	
1984	---
1985	$70
1986	100
1987	130
1988	---
Estimated outlays:	
Fiscal year:	
1984	---
1985	28
1986	65
1987	94
1988	63

The costs of this bill fall within budget function 300.

Basis of estimate: The authorization levels are those stated in the bill. For purposes of this estimate, it was assumed that the full amounts authorized will be appropriated prior to the start of each fiscal year. Outlays were assumed to occur at a rate similar to that for existing EPA grant programs.

6. Estimated cost to State and local governments: This bill requires States to submit a nonpoint source pollution management plan to the EPA within eighteen months after enactment of the Clean Water Act Amendments of 1983. Based on information from several States, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), and the National Association of Conservation Districts (NACD), most States will not incur significant additional costs if ongoing activities can be modified to suit the requirements of the EPA. However, should the EPA require substantially different information from that which is presently generated by the States, additional costs will be incurred. It is estimated that costs for plan preparation will range from approximately $50,000 to $250,000 for most States.

States that have received EPA approval of this nonpoint source pollution management plan are eligible for implementation grants totalling $70 million in fiscal year 1985, $100 million in fiscal year 1986, and $130 million in fiscal year 1987. A 25 percent nonfederal contribution is required for those States that wish to participate. If all the grant funds are appropriate and disbursed, the State contributions would total approximately $100 million over the period from 1985 through 1991.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 21, 1983, the Congressional Budget Office prepared a cost estimate for S. 431, the Clean Water Act Amendments of 1983, as ordered reported by the Senate Committee on Environment and Public Works, June 28, 1983. That bill authorized annual appropriations of $464 million for fiscal years 1984 through 1987, including $150 million per year for a nonpoint source pollution management program.

9. Estimate prepared by: Anne Hoffman and Mary Ann Curtin.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

Evaluation of Regulatory Impact

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires States to develop nonpoint source pollution management programs to be reviewed and approved by the Administrator of EPA. This provision is consistent with existing provisions under the Clean Water Act to control pollution of the Nation's waters. It is not expected that there will be any new regulatory burden created by this new provision, beyond that currently authorized by the Act.

Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

The Committee vote to report this bill is announced as 16–0.

Voting in the affirmative to report the bill from the full Committee were Senators Stafford, Baker, Chafee, Simpson, Abdnor, Symms, Domenici, Durenberger, Humphrey, Randolph, Bentsen, Burdick, Hart, Moynihan, Mitchell, and Baucus.

Hearings

The Committee held hearings on July 19, 1983 in Washington, D.C., and on August 24, 1983, in Moorhead, Minnesota. The testimony and exhibits have been included in the hearing record.

The Commitee had one mark-up session on September 21, 1983, and voted to order the bill reported.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Federal Water Pollution Control Act, As Amended

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) * * *

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act [.] *and nonpoint source pollution management programs approved under section 319 of this Act.*

* * * * * * *

NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within 18 months after the date of enactment of the Clean Water Act Amendments of 1983, a proposed nonpoint source pollution management program which shall—

(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;

(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollutant loadings to the waters identified under subparagraph (A);

(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B);

(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories and particular nonpoint sources designated under subparagraph (B);

(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

(F)(i) include a statement from the attorney general of such State or States (or the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional

authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), and 305(b), and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Pursuant to paragraphs (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragrah (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within 30 months after the date of enactment of the Clean Water Act Amendments of 1983, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	Percentage allotment	State	Percentage allotment
Alabama	1.56	New Jersey	1.62
Alaska	.50	New Mexico	1.93
Arizona	1.95	New York	4.22
Arkansas	1.43	North Carolina	1.90
California	6.37	North Dakota	2.14
Colorado	2.19	Ohio	3.14
Connecticut	.68	Oklahoma	2.05
Delaware	.50	Oregon	1.75
District of Columbia	.50	Pennsylvania	2.97
Florida	2.66	Rhode Island	.50
Georgia	2.04	South Carolina	1.09
Hawaii	.50	South Dakota	1.94
Idaho	1.20	Tennessee	1.50
Illinois	4.03	Texas	8.08
Indiana	2.07	Utah	1.36
Iowa	2.39	Vermont	.50
Kansas	2.78	Virginia	1.60
Kentucky	1.32	Washington	1.58
Louisiana	1.56	West Virginia	.60
Maine	.55	Wisconsin	1.90
Maryland	1.03	Wyoming	1.39
Massachusetts	1.25	Guam	.10
Michigan	2.67	Northern Marianas	.10
Minnesota	2.43	Pacific Trust Territories	.10
Mississippi	1.40	Puerto Rico	.72
Missouri	2.44	Samoa	.10
Montana	2.46	Virgin Islands	.10
Nebraska	2.26		
Nevada	1.78	Total	100.00
New Hampshire	.50		

(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the

Administrator determines such grants are necessary and appropriate to assist such States in—

(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

(iii) controlling interstate nonpoint source pollution problems; or,

(iv) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one third of one percent of the total amount appropriated for grants for each year.

(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

(6) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

(7) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1985, $100,000,000 for the fiscal year ending September 30, 1986, and $130,000,000 for the fiscal year ending September 30, 1987.

(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

(f) The Administrator shall—

(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance

applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than 60 days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

(3) submit to the Congress, within 36 months of enactment of the Clean Water Act Amendments of 1983, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

(B) describes the experiences of the States in adhering to schedules and implementing best management practices;

(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.

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